

OK 001300-19

In the Matter of an Application of:

COLE FARRANT

(Name of Applicant)

for an Order to Compel

Kevin L. Wilcox, to

(Name of Arrestee)

AFFIDAVIT IN SUPPORT OF  
APPLICATION FOR AN ORDER  
COMPELLING SUBMISSION  
TO A CHEMICAL TEST  
PURSUANT TO V&T LAW  
SECTION 1194(3)

Submit to a Chemical Test,  
Pursuant to V&T Law Section 1194(3)

State of New York )  
County of Broome) SS:

COLE FARRANT, being duly sworn, deposes and says that:

1. I am a police officer employed by BROOME COUNTY POLICE Department (or district attorney for the County of \_\_\_\_\_). I make this affidavit in support of an application for an Order to compel the above-named arrestee to submit to a chemical test pursuant to Vehicle and Traffic Law Section 1194(3).

...This affidavit is based upon my direct knowledge and/or upon information and belief, the source of my information and the grounds for my belief being as follows

(Describe who you spoke to concerning the accident, including the arrestee):

Patrick McCormick, Michael G. Maney, Nicholas H. Chase  
Kevin L. Wilcox

2. Based on the above, I have probable cause to believe that on the 11/21 day of MARCH, 2011, at approximately 3:26 (a.m. / p.m.) the arrestee was the operator of a motor vehicle, more particularly described as a 1995 Jeep Wrangler registered in the State of NEW YORK, and bearing license plate number 6JE 841, which was operated on Beethoven, a public highway in Broome County, New York.

11/21/11  
3/11/11

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In the course of such operation, a person or persons other than the arrestee was/were killed or suffered serious physical injury as that term is defined in Penal Law Section 10.00(10). Upon information and belief, the accident occurred as follows:

Subject was traveling South on Beethoven St when witnesses stated he appeared to fall asleep and travelled left onto the curb and struck 2 pedestrians who were in the front yard of 49 Beethoven St. Subject initially was unaware he was involved in an MVA but later stated that the accident was due to his pedda which "stuck".

As a result of the accident, the following person or persons was/were killed and/or suffered the following serious physical injury:

26-99 BRITNEY LIPSHIKO - [REDACTED]

7-02 HARRIET STANTZ - [REDACTED]

3. A breath test administered by the police officer in accordance with V&T Law Section 1194(1)(b).

Indicated that alcohol has been consumed by the arrestee.

RECHAMPTON  
SPRING CITY CO.  
SPRING CITY  
MAR 12 2018

-OR-

Based on the totality of the following circumstances, there is reasonable cause to believe that the arrestee was operating the motor vehicle in violation of Vehicle and Traffic Law Section 1192

(Describe specific circumstances indicating intoxication/impairment)

Subject Admisioned to having used Suboxone 8mg 30 mins prior to operating his motor vehicle. Subject exhibited Constricted Pupils, was Swaying and stated he must have blacked out prior to accident. SFST's 16/16 out of 6 (consistent with Orguse) eyes blood shot/glossy corneas

1000  
3/1/19

WALK and TURN: 2 out of 8 CLUES - Failure  
Arms raised, Could not keep balance during instructional phase.  
Throughout test.

One Legged Stand: 2 out of 4 CLUES - Failure.  
Swaying while balancing, Arms raised.

Subject's Speech was Slow/lethargic.

DRE Evaluation conducted in which DRE's  
Observation of Defendant's Appearance/Mannerism/  
Physical characteristics were consistent with:  
Recent opiate use.

Subject had recent track marks on both  
Arms.

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4. At 4:12 (a.m / p.m), on the 11<sup>th</sup> day of MARCH, 2019 the above-named arrestee was placed under arrest for a violation of V&T Law Section 1192, subdivision 4.

5. After being placed under arrest, the arrestee refused to submit to a chemical test in accordance with the provisions of Vehicle and Traffic Law Section 1194 by

(Describe the circumstances of the refusal)

WHEN FIRST ASKED TO SUBMIT TO BLOOD TEST DEFENDANT REQUESTED OPPORTUNITY TO SPEAK WITH ATTORNEY AFTER SPEAKING WITH ATTORNEY PAUL BATTISI DEFENDANT WAS AGAIN ASKED IF WOULD SUBMIT TO CHEMICAL TEST OF BLOOD + D&D. ANSWERED NO I WAS TOLD KED TO CHEMICAL TEST WARNED USING THEM READ TO DEF A TOT OF ~~2~~ <sup>1</sup> MOLDS + DEF. THREBARTZ REFUSED 2 MOLDS

5. After being placed under arrest, the arrestee is unable to give consent to a chemical test in accordance with Vehicle and Traffic Law Section 1194 because

(Describe the incapacity)

WHEREFORE; it is respectfully requested that the Court issue an order requiring the arrestee to submit to a chemical test to determine the alcoholic and/or drug content of his/her blood and directing a person authorized by Vehicle and Traffic Law Section 1194(a)(1) to withdraw a blood sample from the arrestee for the purpose of determining the alcoholic and/or drug content thereof.

Ode Sallad  
C. WARRANT

Sworn to this 11 day  
of March of 2019 at 7:00 AM 2019 MAR 12 AM 7:48

K. P. Henley  
(Judge/Justice)  
(Notary Public)

CITY COURT  
BINGHAMTON  
RECEIVED BY

KPD  
3/11/19